THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.2037 of 2007

Date: 7th September, 2007

Between :-

Maddi Raja Shekar Reddy .. petitioner

And

The Regional Passport Officer,
Regional Passport Office,
Adj. to Prashant Theatre, Secunderabad .. Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.2037 of 2007

ORDER:-

This Court on 6-2-2007 issued *rule nisi.*

2. Heard Sri A.Chandrasekhar the learned Counsel representing the petitioner.

3. The Writ Petition is filed for a Writ of Mandamus directing the respondent to enter the correct date of birth of the petitioner and to issue the passport with corrected date of birth as 10-3-1970 and to pass such other suitable orders.

4. It is stated by the petitioner that the original date of birth is 10th March, 1970 and the same is reflected in all his certificates. He also stated that in the Secondary School Certificate issued by the Board of Secondary Education, his date of birth is correctly mentioned as 10-3-1970. He also stated that he completed his Secondary School in the year 1986 and the certificate is issued by the competent authority i.e., Board of Secondary Education. He also further stated that at the time of his first application to the respondent for issuance of passport, he had submitted his Secondary School Certificate for proof of his age and date of birth. It is also

further stated that he is a resident of Hyderabad and he is a businessman. It is stated that the petitioner applied for a passport with the respondent and the respondent after due verification had issued a passport vide No.E5871328 on 25-6-2003 which is valid from 25-6-2003 till 24-6-2013 and the same is subsisting. He further stated that inadvertently a wrong date of birth crept in his passport wherein his date of birth appeared as July 01, 1970 (1-7-70) instead of 10-3-1970. The date of birth that is reflected in his passport is not correct and inadvertently the mistake has crept in. He stated that the date and month of his date of birth is wrongly reflected but the year is correctly shown as 1970. He also further stated that at the time of submission of passport application, along with his passport application he submitted his Secondary School Certificate wherein his date of birth was correctly mentioned as 10-3-1970. He further stated that the respondent authority ought to have entered the correct date of birth in his passport as he had also furnished the certificate towards proof of his age. He further stated that due to oversight the wrong entry was not detected by him at an earliest point of time and having detected the same, immediately he made an application to the respondent on 14-12-2006 along with the Secondary School Certificate seeking correction and change of his date of birth. He

also stated that the respondent refused to receive the same and directed him to obtain the order from the competent Court for correction of the date of birth. He stated that the wrong entry of his date of birth in his passport occurred inadvertently and the same is neither wanton nor willful and that is not a deliberate act on his part either to deceive or to get any undue advantage. It is also further stated by the petitioner that in this connection the Government of India in the Ministry of External Affairs issued a Circular dt.18-4-2001 and according to clause (a) of the said circular, where an applicant is seeking rectification of date of birth in the passport, Passport Issuing Authority may after verifying/satisfying himself, affect the correction treating it as technical correction and there is no need for declaratory orders in such cases. It is also stated that the said Circular/instructions were considered by this Court in Mohd.Nasrullah Khan v. Regional Passport Officer, Hyderabad reported in 2005 (1) ALT 95, held that the passport issuing authority can make such rectification or correction in the date of birth and it was also held by this Court that where the date of birth was recorded basing on one document in such cases alone the declaration from a Civil Court is required.It is also stated by the petitioner that in his case, the date of

birth in the passport was inadvertently recorded as 1-7-1970 instead of 10-3-1970. The petitioner also stated that according to his Secondary School Certificate his date of birth is 10-3-1970 and he submitted the said certificate to the respondent while making application for issuance of the passport. It is also further stated by the petitioner that the same while making application for correction of date of birth. The petitioner also further stated that he is not seeking change of date of birth basing on different documents but he is seeking the correct of date of birth which was wrongly made at the time of issuing the passport and as such his case is squarely covered by clause (a) of the said circular and also similar to that of reported Judgment stated supra. The petitioner further stated that in the above circumstances, the respondent authority ought to have considered the matter and ought to have made corrections in pursuance to the circular mentioned above, but the respondent refused to do so by refusing to receive his application and to rectify the date of birth.

5. The Circular dt.18-4-2001 reads as hereunder:-

Ministry of External Affairs
(PV-I Section)
Circular

___/401/2/5/2001 *18th*

April, 2001

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent Judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent

authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Sd//
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L&T Division, MEA

The learned Counsel placed strong reliance on the decision in ***ALI IMRAN v. REGIONAL PASSPORT OFFICER, SECUNDERABAD***[1] wherein the learned Judge of this Court at paras 3 and 4 observed as hereunder:-

> *"Be it noted that under provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinafter, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to*

obtain a proper declaration from the Civil Court.

Having regard to the clarification issued by the Government of India, I directed the learned Standing Counsel for Central Government, Sri K.G.Krishna Murthy to produce a copy of the application made by the petitioner for passport in the year 1999. The application is produced before me today. A perusal of the application along with its enclosures reveal that the petitioner enclosed Secondary School Certificate bearing C019604 dated 10-6-1987 which shows his date of birth as 28-7-1992. Therefore, it cannot be said that an error has crept in the passport issued to the petitioner. As the petitioner is now placing reliance on the on the birth certificate issued by the Registrar of Births and Deaths, Municipal Corporation of Hyderabad, which shows his date of birth as 28-7-1975, his case does not fall within the guidelines/instructions issued by the Government of India. If the petitioner is so advised, he may have to approach the Civil Court or the authorities under the Education Act seeking necessary correction of date of birth in the Secondary School Certificate and then approach the passport issuing authority. The petitioner's application was rightly not accepted by the respondent."

In ***Mohd.Narsullah Khan v. Regional Passport Officer, Hyderabad***[2] the learned Judge observed at paras 4, 5, 6 and 7 as hereunder:-

"In ***Ali Imran v. Regional Passport***

Officer, Secunderabad (2003 (4) ALT 474 = 2003 (3) ALD 625, *I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:*

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA

should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt.18-4-2001.

Following the Judgment of this Court in ***Ali Imran (referred above)*** *this Writ Petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the*

Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."

6. The specific stand taken by the petitioner is that in the Secondary School Certificate issued by the Board of Secondary Education, the petitioner's date of birth was correctly mentioned. In the light of the facts and circumstances and also the specific stand taken by the petitioner, the respondent is hereby directed to consider the case of the petitioner in relation to his change of date of birth in accordance with the Secondary School Certificate in the light of the Circular and also the views expressed by this Court in the decisions referred to supra, within a period of four weeks from the date of receipt of this order.

7. The Writ Petition is accordingly disposed of. No order as to costs.

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Justice P.S.Narayana

7th September, 2007

Note: C.C. in three days (B/o.SMR)

[1] 2003 (3) ALD 625

[2] 2005(1) ALT 95